

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Jose Tinajero,)	
)	Judge John F. Kness
Plaintiff,)	Magistrate Judge Fuentes
)	
vs.)	No.: 24 cv 01598
)	
City of Chicago, Reynaldo Guevara,)	(Jury Demand)
Geri Lynn Yanow, as special representative)	
for Ernest Halvorsen, deceased, Hector)	
Vergara, Geri Lynn Yanow, as special)	
representative for Joseph Mohan, deceased,)	
Randy Troche, Kevin Rogers as special)	
representative for Francis Cappitelli,)	
deceased, Edward Mingey, Jacob)	
Rubinstein, and Cook County,)	
)	
Defendants.)	

REYNALDO GUEVARA'S ANSWER TO AMENDED COMPLAINT

NOW COMES Defendant, REYNALDO GUEVARA, by and through his attorneys, Steven B. Borkan, Timothy P. Scahill, Emily E. Schnidt, Molly E. Boekeloo, and Kathryn E. Boyle of BORKAN & SCAHILL, LTD., and for his Answer to Plaintiff's Amended Complaint, states as follows:

1. This is a civil action arising under 42 U.S.C. § 1983. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1343 and 1367.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

2. When he was just 21 years old, plaintiff Jose Tinajero was framed for murder by notorious Chicago police detective Reynaldo Guevara and other officers.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

3. Plaintiff served twenty-five years of wrongful imprisonment before he was exonerated and released from custody in 2024.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

4. The Chicago Police Department's official policies and customs of failing to discipline, supervise, and control its officers, as well as its code of silence, caused the misconduct of Guevara and the other officers.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

5. Based on the powerful evidence that has come to light about Guevara's repeated wrongdoing and evidence of plaintiff's innocence, the Circuit Court of Cook County vacated plaintiff's conviction on January 31, 2024.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

6. Plaintiff brings this lawsuit to secure a remedy for the grievous harms he suffered from his wrongful imprisonment.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

I. Parties

7. Plaintiff Jose Tinajero is a resident of the Northern District of Illinois.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

8. Defendants Reynaldo Guevara, Hector Vergara, Randy Troche, and Edward Mingey were, at all relevant times, acting under color of their offices as Chicago police officers. Plaintiff sues these defendants in their individual capacity only.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed

to him by the Fifth Amendment of the United States Constitution.

9. Defendant Geri Lynn Yanow is sued in her capacity as Special Representative of Ernest Halvorsen, as successor in interest and to defend this action on behalf of Ernest Halvorsen.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

10. Defendant Geri Lynn Yanow is sued in her capacity as Special Representative of Joseph Mohan as successor in interest and to defend this action on behalf of Joseph Mohan.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

11. Defendant Kevin Rogers is sued in his capacity as Special Representative of Francis Cappitelli as successor in interest and to defend this action on behalf of Francis Cappitelli.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

12. Ernest Halvorsen, Joseph Mohan, and Francis Cappitelli were, at all relevant times, acting under color of their offices as Chicago police officers.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

13. Plaintiff refers to Reynaldo Guevara, Hector Vergara, Randy Troche, Edward Mingey, Ernest Halvorsen, Joseph Mohan, and Francis Cappitelli as the “individual officer defendants.”

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

14. Defendant City of Chicago is an Illinois municipal corporation and was at all relevant time the employer of the individual officer defendants. Plaintiff asserts federal and state

law claims against defendant City of Chicago and sues the City as the potential indemnitor of the individual officer defendants.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

15. Defendant Jacob Rubinstein was, at all relevant times, an Assistant Cook County State's Attorney. Plaintiff sues Rubinstein in his individual capacity only.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

16. Defendant Cook County is a governmental entity within the State of Illinois and was at all relevant times the employer of Rubinstein. Plaintiff asserts a state law claim against defendant Cook County, sues the County as the potential indemnitor of Rubinstein, and does not assert any federal claim against the County.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

II. False Arrest and Unreasonable Prosecution of Plaintiff

17. On October 12, 1998, Daniel Garcia received a fatal beating in a Chicago alley near Whipple Street and Armitage Avenue.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

18. Plaintiff did not have any involvement in the beating.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

19. Defendants Guevara and Halvorsen investigated the murder of Daniel Garcia.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

20. Defendants Guevara and Halvorsen conspired, confederated, and agreed to

fabricate a false story that plaintiff, John Martinez, and Thomas Kelly had jointly beaten and robbed Garcia.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

21. The acts of Guevara and Halvorsen in furtherance of their scheme to frame plaintiff include the following:

- a. They caused Margarita Casiano to make a false statement implicating plaintiff in the murder;
- b. They caused Melloney Parker to sign a false statement implicating plaintiff in the murder;
- c. They caused plaintiff to make a false confession implicating himself in the murder;
- d. They caused Martinez to make a false confession implicating himself and plaintiff in the murder;
- e. They caused Kelly to make a false confession implicating himself and plaintiff in the murder; and
- f. They caused Melloney Parker, Esteban Rodriguez, and Jesus Fuentes to make false eyewitness identifications implicating plaintiff in the murder.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

22. The acts of Guevara and Halvorsen in furtherance of their scheme to frame plaintiff also include the following:

- a. They prepared police reports containing the false story;
- b. They attested to the false story through the official police reports; and

c. They communicated the false story to prosecutors.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

23. Defendants Vergara, Mohan, Troche, Cappitelli, and Mingey either participated in the above-described acts or knew of those acts and failed to intervene to prevent the violation of plaintiff's rights.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

24. Defendant Rubinstein, acting in an investigatory capacity, participated in fabricating the false statements signed by Parker, Martinez, and Kelly.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

25. The individual officer defendants and defendant Rubinstein committed the above-described wrongful acts knowing that their acts would cause plaintiff to be held in custody and wrongfully prosecuted.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

26. Plaintiff was charged with murder because of the wrongful acts of the individual officer defendants and Rubinstein.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

27. The prosecution relied at trial on the false story, including plaintiff's coerced confession.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

28. On September 27, 2001, a jury found plaintiff guilty of first-degree murder and

robbery, and the Circuit Court of Cook County sentenced plaintiff to concurrent sentences of 30 years for murder and 10 years for robbery.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

29. Martinez and Kelly were also convicted of murder.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

30. Plaintiff was deprived of liberty because of the above-described wrongful acts of the individual officer defendants and defendant Rubinstein.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

III. Plaintiff's Exoneration

31. Plaintiff challenged the above-described wrongful conviction after learning that lawyers for other wrongfully convicted individuals had discovered repeated misconduct by Guevara.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

32. On January 31, 2024, the Circuit Court of Cook County vacated plaintiff's convictions and granted the State's request to dismiss the case.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

33. Kelly's conviction was also vacated on January 31, 2024, and Martinez's conviction had been vacated on January 17, 2023.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

34. Petitioner was released from prison the day after his exoneration; he had been

continuously incarcerated for 25 years.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

IV. Official Policies and Customs of the Chicago Police Department Were the Moving Force for the Misconduct of the Individual Officer Defendants

35. At all relevant times, the Chicago Police Department maintained official policies and customs that facilitated, encouraged, and condoned the misconduct of the individual officer defendants.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

A. Failure to Discipline

36. At all relevant times, the Chicago Police Department maintained a policy or custom of failing to discipline, supervise, and control its officers. By maintaining this policy or custom, the City caused its officers to believe that they could engage in misconduct with impunity because their actions would never be thoroughly scrutinized.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

37. Before plaintiff's arrest, policymakers for the City of Chicago knew that the Chicago Police Department's policies or customs for disciplining, supervising, and controlling its officers were inadequate and caused police misconduct.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

38. Despite their knowledge of the City's failed policies and customs for disciplining, supervising, and controlling its officers, the policymakers failed to take action to remedy these problems.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed

to him by the Fifth Amendment of the United States Constitution.

39. As a direct and proximate result of the Chicago Police Department's inadequate policies or customs for disciplining, supervising, and controlling its officers and the policymakers' failure to address these problems, the individual officer defendants engaged in misconduct, including but not limited to the wrongful arrest, detention, and prosecution of plaintiff, as described above.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

B. Code of Silence

40. At all relevant times, the Chicago Police Department maintained a "code of silence" that required police officers to remain silent about police misconduct. An officer who violated the code of silence would be penalized by the Department.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

41. At all relevant times, police officers were trained at the Chicago Police Academy not to break the code of silence. Officers were instructed that "Blue is Blue. You stick together. If something occurs on the street that you don't think is proper, you go with the flow. And after that situation, if you have an issue with that officer or what happened, you can confront them. If you don't feel comfortable working with them anymore, you can go to the watch commander and request a new partner. But you never break the code of silence."

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

42. This "code of silence" facilitated, encouraged, and enabled the individual officer defendants to engage in egregious misconduct for many years, knowing that their fellow officers would cover for them and help conceal their widespread wrongdoing.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

43. In the case of *Obrycka v. City of Chicago et al.*, No. 07-cv-2372 (N.D. Ill.), a federal jury found that, as of February 2007, “the City [of Chicago] had a widespread custom and/or practice of failing to investigate and/or discipline its officers and/or code of silence.”

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

44. In December 2015, Chicago Mayor Rahm Emanuel acknowledged the continued existence of the code of silence within the Chicago Police Department; Emanuel, speaking in his capacity as Mayor, admitted that the code of silence leads to a culture where extreme acts of abuse are tolerated.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

45. In April 2016, the City’s Police Accountability Task Force found that the code of silence “is institutionalized and reinforced by CPD rules and policies that are also baked into the labor agreements between the various police unions and the City.”

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

46. In an official government report issued in January 2017, the United States Department of Justice found that “a code of silence exists, and officers and community members know it.”

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

47. On March 29, 2019, then-Chicago Police Superintendent Eddie Johnson publicly acknowledged the code of silence, stating that some Chicago police officers “look the other way” when they observe misconduct by other Chicago police officers.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

48. In October 2020, then-Chicago Police Superintendent David Brown acknowledged in public comments that the “code of silence” continues to exist.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

49. The same code of silence in place during the time period at issue in the *Obrycka* case and recognized by the Mayor, Superintendent Johnson, Superintendent Brown, the Task Force, and the Department of Justice was also in place when plaintiff suffered the wrongful arrest, detention, and prosecution described above.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

50. As a direct and proximate result of the City’s code of silence, the individual officer defendants engaged in misconduct, including but not limited to the wrongful arrest, detention, and prosecution of plaintiff, as described above.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

C. The City’s Policies and Customs Have Caused Numerous Other Wrongful Convictions

51. Chicago Police Officers, including the individual officer defendants, acting pursuant to defendant City of Chicago’s “code of silence” and defective discipline policy have concocted false stories, fabricated evidence, and caused wrongful convictions in many cases.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

52. In each case, the officers concocted false stories and fabricated evidence because they knew that there would be no consequences for their misconduct because of defendant City

of Chicago's "code of silence" and defective discipline policy.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

53. These numerous cases include, but are not limited to, the following:

- a. In August of 1988, defendant Guevara caused Jacques Rivera to be falsely convicted of murder by coercing a witness to falsely identify Rivera;
- b. In September of 1989, defendant Guevara caused Juan Johnson to be falsely convicted of murder by coercing a witness to falsely identify Johnson;
- c. In August of 1990, defendant Guevara caused Jose May-sonet to be falsely convicted of murder by coercing him into falsely confessing;
- d. In January of 1991, defendant Guevara caused Xavier Arcos to be falsely convicted of murder by coercing a witness to falsely identify Arcos;
- e. In May of 1993, defendants Guevara and Halvorsen caused Armando Serrano and Jose Montanez to be falsely convicted of murder by coercing a witness to falsely testify that Serrano and Montanez admitted to committing the murder;
- f. In May of 1993, defendants Guevara and Halvorsen caused Robert Bouto to be falsely convicted of murder by coercing two jailhouse informants to falsely testify that Bouto admitted to committing the murder;
- g. In June of 1993, defendant Guevara caused Gabriel Iglesias to be falsely convicted of murder by coercing two witnesses to falsely identify Iglesias and by coercing a jailhouse informant to falsely testify that Iglesias admitted to committing the murder;

- h. In September of 1994, defendant Guevara caused Roberto Almodovar and William Negrón to be falsely convicted of murder by coercing a witness to falsely identify Almodovar and Negrón;
- i. In May of 1995, defendants Guevara and Halvorsen caused Thomas Sierra to be falsely convicted of murder by coercing false testimony from two witnesses; and
- j. In April of 1998, defendant Guevara caused Gabriel Solache and Arturo Reyes to be falsely convicted of murder and kidnapping by coercing them to give false confessions.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

V. Claims

54. As a result of the foregoing, the individual officer defendants, the City of Chicago, and defendant Rubinstein caused plaintiff to be deprived of rights secured by the Fourth, Fifth, and Fourteenth Amendments.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

55. As a supplemental state law claim against defendant City of Chicago and defendant Cook County: as a result of the foregoing, plaintiff was subjected to a malicious prosecution under Illinois law.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

56. Plaintiff hereby demands trial by jury.

ANSWER: Defendant Guevara responds to this allegation by asserting the rights guaranteed to him by the Fifth Amendment of the United States Constitution.

WHEREFORE, Defendant Guevara prays this Court enter judgment in his favor and against Plaintiff. Defendant Guevara demands trial by jury.

AFFIRMATIVE DEFENSES

NOW COMES Defendant, REYNALDO GUEVARA, by and through his attorneys, Steven B. Borkan, Timothy P. Scahill, Emily E. Schnidt, Molly E. Boekeloo, and Kathryn E. Boyle of BORKAN & SCAHILL, LTD., and without intending to waive his rights under the Fifth Amendment of the United States Constitution, asserts the following Affirmative Defenses:

Qualified Immunity

At all times during the events alleged in Plaintiff's Amended Complaint, a reasonable police officer, objectively viewing the facts and circumstances then confronting Defendant Guevara at issue during the incident which allegedly provides the basis for the present case, could have reasonably believed that the actions taken by him were objectively reasonable and were within constitutional limits that were clearly established at the time. Defendant Guevara is, therefore, entitled to qualified immunity.

Absolute Immunity

To the extent the Amended Complaint purports to attempt to impose liability on Defendant Guevara relating to acts or perjury or false testimony of any kind, or failure to testify or disclose the true nature of circumstances leading up to Plaintiff's arrest or prosecution, Defendant Guevara is absolutely immune from liability pursuant to federal and state law immunities. *Briscoe v. LaHue*, 460 U.S. 325 (1983); *Jurgenson v. Haslinger*, 295 Ill. App. 3d 139 (3d Dist. 1998).

Failure To State A Claim

Insofar as Plaintiff's claims are premised upon the reliability of pretrial identification by

witnesses, Plaintiff's sole and exclusive remedies under governing law are those afforded in the underlying criminal case and, thus, any claims asserted herein arising from such allegations do not set forth a viable legal cause of action. Insofar as Plaintiff alleges a claim based upon a failure to intervene or otherwise premised upon the actions of another person, such claims similarly are not viable legal claims.

Failure to Mitigate

To the extent Plaintiff failed to mitigate any of his claimed injuries or damages, any verdict or judgment obtained by Plaintiff must be reduced by application of the principle that Plaintiff has a duty to mitigate, commensurate with the degree of failure to mitigate attributed to Plaintiff by the jury in this case.

Comparative or Contributory Fault

To the extent any injuries or damages claimed by Plaintiff were proximately caused, in whole or in part, by the negligent, willful, wanton, and/or other wrongful conduct on the part of the Plaintiff, any verdict or judgment obtained by Plaintiff must be reduced by application of the principles of comparative fault, by an amount commensurate with the degree of fault attributed to Plaintiff by the jury in this cause.

Statute of Limitations on Federal Claims

To the extent any of Plaintiff's claims arising under 42 U.S.C. § 1983 accrued more than two years prior to the institution of this suit, Plaintiff's claims are barred by the applicable statute of limitations.

745 Ill. Comp. Stat. 10/8-101

To the extent any of Plaintiff's claims arising under Illinois state law accrued more than one year prior to the institution of this suit, Plaintiff's claims are barred by the applicable statute

of limitations.

745 Ill. Comp. Stat. 10/2-208

As to the state law claims, Defendant Guevara is not liable for any of the claims alleged because a public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, unless he acts maliciously and without probable cause. 745 ILCS 10/2-208.

745 Ill. Comp. Stat. 10/2-204

As to the state law claims, Defendant Guevara is not liable for any of the claims alleged because a public employee, as such and acting within the scope of his employment, is not liable for an injury caused by the act or omission of another person. 745 ILCS 10/2-204.

735 Ill. Comp. Stat. 5/13-202

To the extent any Count in the Amended Complaint seeks recovery under state law for any acts or omissions not within the scope of actions subject to the statute of limitations set forth in 745 Ill. Comp. Stat. 10/8-101(a), any of Plaintiff's claims accruing more than two years previous to the filing of this suit are barred by 735 Ill. Comp. Stat. 5/13-202.

745 Ill. Comp. Stat. 10/2-201

At certain times relevant to this suit, Defendant Guevara was performing discretionary acts within the scope of his employment pursuant to 745 Ill. Comp. Stat. 10/201 and thus is immune from suit.

745 Ill. Comp. Stat. 10/2-210

To the extent the acts alleged are held to constitute a negligent misrepresentation or provision of information by the Defendant Guevara, Defendant Guevara is immune from suit as a public employee acting in the scope of employment pursuant to 745 Ill. Comp. Stat. 10/2-210.

745 Ill. Comp. Stat. 10/2-202

As to the state law claims, Defendant Guevara is not liable for any of the claims alleged because at all times relevant to this Amended Complaint he was a public employee, namely a police officer, who was engaged in the execution and enforcement of the law, and none of his acts or omissions in the execution or enforcement of any law constituted willful and wanton conduct. 745 ILCS 10/2-202.

745 Ill. Comp. Stat. 10/2-205 and 745 Ill. Comp. Stat. 10/2-103

To the extent the Amended Complaint seeks recovery based on an injury relating to a failure to enforce the law, Defendant Guevara is immune from suit pursuant to 745 Ill. Comp. Stat. 10/2-205.

745 Ill. Comp. Stat. 10/2-212

To the extent the Amended Complaint seeks recovery based upon joint action between public employees, Defendant Guevara is immune from suit pursuant to 745 Ill. Comp. Stat. 10/2-212.

745 Ill. Comp. Stat. 10/4-102

Under the Illinois Tort Immunity Act, neither a public entity nor a public employee can be held liable for the failure to provide police services or the failure to provide adequate police services or the failure to detect or solve crimes, or the failure to identify or apprehend criminals. 745 ILCS 10/4-102. Defendant Guevara is provided immunity under this provision.

745 Ill. Comp. Stat. 10/4-104

To the extent any Count in the Amended Complaint seeks recovery based upon an injury relating to any interference with the right of a prisoner to obtain a judicial determination or review of the legality of their confinement, Defendant Guevara is not liable for such injuries

pursuant to 745 Ill. Comp. Stat. 10/4-104.

Collateral Estoppel/Issue Preclusion and/or Res Judicata/Claim Preclusion

Plaintiff's claims as asserted are barred by the doctrine of Collateral Estoppel/Issue Preclusion and/or Res Judicata/Claim Preclusion to the extent applicable.

Unconstitutionality of Punitive Damages Award, If Any

An award of punitive damages would deprive Defendant Guevara of due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution where liability for punitive damages has not been proven beyond a reasonable doubt or at least by clear and convincing evidence, or where the award of punitive damages is disproportionate to actual damages.

WHEREFORE, Defendant Guevara prays this Court enter judgment in his favor and against Plaintiff. Defendant demands trial by jury.

JURY DEMAND

This Defendant demands a trial by jury.

Respectfully submitted,

BORKAN & SCAHILL, LTD.

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